

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
) File No. 0000710750
Starpage, Inc.)

Order

Adopted: December 6, 2002

Released: December 9, 2002

By the Deputy Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

I. Introduction

1. On April 17, 2002, JPJ Electronic Communications, Inc. Rene Matthew Corporation (“JPJ”) filed a Petition to Deny (“Petition”) against the above-captioned long-form application (FCC Form 601) of Starpage, Inc. (“Starpage”). Starpage, which was among the winning bidders of the Lower and Upper Paging Bands Auction No. 40 (“Auction No. 40”), was granted a bidding credit as a very small business entity.¹ In its Petition, JPJ argues that Starpage failed to disclose the names of all of its officers as required by section 1.2112(b)(1)(i) of the Commission’s rules for purposes of determining whether Starpage qualified for the bidding credit.² JPJ requests, in the alternative, that the Commission reconsider its decision to deny JPJ bidding credits and apply such credits to the licenses acquired by JPJ in Auction No. 40. For the reasons discussed below, we dismiss the Petition for lack of standing. As further discussed below, we would deny the Petition even if we addressed the merits.

II. Discussion

2. We find that JPJ has failed to demonstrate the requisite standing to file a Petition to Deny. Section 309(d)(1) of the Communications Act, as amended, permits any “party in interest” to file a petition to deny an application.³ In general, to establish standing, a petitioner must allege sufficient facts to demonstrate that grant of the subject application would cause the petitioner to suffer a direct injury.⁴ The petition must further demonstrate a causal link between the claimed injury and the challenged action.⁵ In the auctions context, the Wireless Telecommunications Bureau has adopted the general rule that a

¹ See 47 C.F.R. § 1.2110(f)(2)(i) (setting forth bidding credit criteria).

² See Petition at 4-5.

³ 47 U.S.C. § 309(d)(1).

⁴ See Minnesota PCS Limited Partnership, *Order*, 17 FCC Rcd. 126, 128 (CWD 2001); Black Crow Wireless, L.P., *Order*, 16 FCC Rcd. 15,643, 15,644-45 (CWD 2001) (“*Black Crow Wireless*”).

⁵ See Americatel Corp., *Memorandum Opinion, Order, Authorization and Certificate*, 9 FCC Rcd. 3993, 3995 (1994); *Black Crow Wireless*, 16 FCC Rcd. at 15,644-45.

petitioner, to establish standing to challenge an application or license in a particular market, must demonstrate that it was qualified and eligible to bid in that market.⁶ JPJ was not a qualified bidder in any of the markets that Starpage won.⁷ Accordingly, we dismiss the Petition for lack of standing.

3. Even if JPJ had demonstrated standing, we would deny its Petition on the merits. JPJ contends that Starpage was ineligible to receive bidding credits because its short-form application (FCC Form 175) was incomplete.⁸ JPJ claims that Starpage did not disclose the names of all of its controlling interests, as required by Commission rules,⁹ for purposes of determining whether an applicant qualifies for a bidding credit. We disagree. In Exhibit A to Starpage's Form 175, the name of James N. Hoff ("Hoff") was listed under next to the subtitle, "Controlling Interest," and Hoff was designated as the corporation's President.¹⁰ After reviewing Starpage's short-form application, Commission staff determined that Starpage disclosed the identity of all of its controlling interests and was eligible for bidding credits.

4. JPJ argues that Starpage's disclosure statements concerning its controlling interest holders were insufficient because Starpage, a California corporation, was required to have a "chairman of the board or a president or both, a secretary, a chief financial officer and other officers."¹¹ The only officer identified on Starpage's application was its President, Hoff.¹² JPJ acknowledges that the California Secretary of State confirmed that Hoff also serves as the chief executive, secretary, chief financial officer and director of Starpage.¹³ JPJ does not dispute that Hoff is the sole controlling interest holder of Starpage and holds all of the offices of the corporation, but instead argues that Starpage's failure to list all of the offices that Hoff held in the corporation violated the Commission's disclosure requirements of section 1.2112(b)(1)(i) of the rules. That section states that applicants seeking bidding credits must "[l]ist the name, address and citizenship of all officers, directors and other controlling interests of the applicant, as described in section 1.2110."¹⁴ Starpage disclosed all of its officers and controlling interest holders. Accordingly, even if we were to consider the Petition, we would not conclude that the fact that Starpage did not list in its short-form application all of the offices held by Hoff was sufficient grounds for denying Starpage's long-form application.

5. JPJ's arguments and alternative request for relief in its Petition suggest that its main complaint is the denial of its claim for bidding credits. A petition to deny another entity's application is not the appropriate vehicle for requesting reconsideration of the denial of the petitioner's request for a bidding credit. In this case, even if we were to consider JPJ's alternative request for reconsideration, we would dismiss it as untimely. Section 1.106(f) of the Commission's rules requires that petitions for

⁶ Alaska Native Wireless, LLC, *Order*, 17 FCC Rcd. 4231, 4235-36 (WTB 2002); Radiofone Nationwide PCS, LLC and Harbor Wireless LLC, *Order*, 16 FCC Rcd. 792, 793 (CWD 2001).

⁷ Starpage won 6 licenses in Basic Economic Area ("BEA") 165, BEA166, BEA167, BEA168, BEA169 and BEA170. *See* Lower and Upper Paging Bands Auction Closes, *Public Notice*, DA 01-2858 (rel. Dec. 11, 2001). JPJ sought 308 licenses in BEA4, BEA5, BEA6, BEA7, BEA8, BEA9 and BEA10. *See* JPJ FCC Form 175, submitted October 3, 2001.

⁸ *See* Petition at 4-5.

⁹ *See* 47 C.F.R. § 1.2112(b)(1)(i).

¹⁰ *See* Starpage FCC Form 175, submitted October 1, 2001 ("Starpage Form 175"), Exhibit A.

¹¹ Petition at 4. Starpage is organized under the laws of the State of California. *See also* CA Code § 312.

¹² *See* Starpage Form 175, Exhibit A.

¹³ *See* Petition at 4-5. *See also* Petition at Exhibit 3 (Starpage's listing of officers and directors filed with the California Secretary of State).

¹⁴ 47 C.F.R. § 1.2112(b)(1)(i).

reconsideration be filed within 30 days from the date of public notice of the challenged action.¹⁵ JPJ was notified that its request for bidding credits was denied on October 17, 2001.¹⁶ The instant Petition was filed on April 17, 2002, six months after that action and well after the 30-day deadline for filing a petition for reconsideration.

III. Ordering Clause

6. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d), and sections 0.331 and 1.939 of the Commission's Rules, 47 C.F.R. §§ 0.331, 1.939, the Petition to Deny filed by JPJ Electronic Communications, Inc. Rene Matthew Corporation on April 17, 2002 IS HEREBY DISMISSED.

Federal Communications Commission

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¹⁵ See 47 C.F.R. § 1.106(f).

¹⁶ Letter from Kathy Garland, Chief, Auctions Operations Branch, Wireless Telecommunications Bureau to Joseph Rositano, President, JPJ Electronic Communications, dated October 17, 2001; Auction of Licenses for Lower and Upper Paging Bands; 193 Qualified Bidders, *Public Notice*, 16 FCC Rcd. 18,575 (2001) (released October 17, 2001).